

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADAM ANKELE : CIVIL ACTION

Plaintiff :

v. :

MARCUS G. HAMBRICK, :

Defendant. : NO. 02-4004

DEFENDANT'S PRETRIAL MEMORANDUM

Pursuant to this Court's Order of May 13, 2003, Defendant, by and through his attorney, Theodore E. Lorenz, Deputy Attorney General, hereby submits this Pretrial Memorandum.

I. NATURE OF THE ACTION AND BASIS FOR JURISDICTION

Plaintiff, Adam Ankele, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that Trooper Hambrick violated the Fourth and Fourteenth Amendments to the U.S. Constitution as a result of his arrest on February 12, 2001. Defendant filed an answer denying plaintiff's allegations and asserting his immunity from suit.

Defendant's initial motion for summary judgment was granted as to plaintiff's Fourth Amendment excessive force claim set forth in Count 2 of the complaint, but denied as to the balance. Defendant filed a motion for reconsideration, which the Court granted as to plaintiff's Fourteenth Amendment Brady claim under Count 3 of the complaint.

Plaintiff's counsel was granted leave to file an amended complaint asserting an illegal arrest claim and malicious

prosecution claim. Defendant filed an answer denying the allegations and claims set forth in the amended complaint and asserting his qualified immunity from suit. Defendant has also filed a motion for summary judgment as to the amended complaint, which motion remains outstanding.

The basis of this Court's jurisdiction is federal question. 28 U.S.C. § 1331.

II. DEFENDANT'S COUNTER-STATEMENT OF FACTS

On February 12, 2001, plaintiff Ankele states that he left work at around 4:00 p.m. and went directly to a bar in Allentown, Pennsylvania, where he stayed until around 6:00 p.m. While at the bar, Ankele states that he drank beer, but did not eat any food. The bartender, Jonathan Christman, testified during his deposition that Ankele drank 2-3 beers and had 2-3 shots of liquor.

After leaving the bar, and around 6:30 p.m. that evening, Ankele smashed his truck into a car stopped at a red light at the intersection of Tilghman Street and Blue Barn Road, in Upper Macungie Township. After smashing into the car, Ankele left the scene. A witness to the accident, Michael Wieder, observed Ankele flee the scene, followed him, and then brought him back.

Pennsylvania State Police Trooper Hambrick was dispatched to the scene. When Trooper Hambrick arrived at the scene, Ankele, accompanied by Wieder, was walking across the road where he had just previously hit the vehicle in front of him. Trooper

Hambrick observed that Ankele walked with a staggered gait.

Trooper Hambrick approached Ankele and asked if he was the driver of the other vehicle. Ankele admitted that he was. During this exchange, Trooper Hambrick smelled alcohol on Ankele's breath and observed that Ankele's eyes were red and bloodshot. Ankele also admitted that he had been drinking.

Michael Wieder, a witness to the accident, previously testified that Ankele's driving was "completely out of control" and that he inflicted "heavy damage" on the car he hit; that Ankele left the accident scene and tried to run away; and that Ankele admitted that he had been drinking and that he was worried about losing his license. This information was related to Trooper Hambrick.

Ankele was taken back to the State Police Barracks at Fogelsville for a breath test. Ankele provided one breath sample which registered .248. Ankele failed to provide an adequate second breath sample to complete the test sequence. Ankele was given several opportunities to complete the breath test, but refused to do so. Consequently, Trooper Hambrick deemed Ankele to be a refusal and turned the machine off. As a result of turning off the breathalyzer, no receipt was produced.

On March 9, 2001, a complaint, along with an affidavit of probable cause, was filed against Ankele charging him with several motor vehicle violations, including driving under the influence so as to render himself incapable of safe driving. A

summons was then issued requiring Ankele to appear at a preliminary hearing in connection with the charges.

On August 8, 2001, the Lehigh County Prosecutor's Office filed an Information against Ankele charging him with being under the influence of alcohol to a degree which rendered him incapable of safe driving. Ankele was not tried under Section 3731(a) (4) relating to blood alcohol content, and the issue of Ankele's refusal to provide a complete breath test was not raised before the jury. Ankele was found not guilty of violating 75 Pa.C.S.A. 3731(a) (1).

A license suspension hearing was held. Ankele was provided notice of the hearing and was represented by counsel. Ankele's license was not suspended.

III. DAMAGE CLAIM

Plaintiff does not have any lost wages, medical bills, or the like supporting a compensatory damage claim and Plaintiff's legal bills are not an appropriate damage figure. If plaintiff is seeking damages for alleged pain and suffering, and anxiety, then defendant should be permitted to put in plaintiff's prior drunk driving arrests and convictions since this is not an isolated incident.

This case does not warrant the submission of a punitive damage charge to the jury.

IV. DEFENDANT'S INTENDED WITNESSES

Defendant may call the following witnesses:

Trooper Marcus Hambrick

Robert Woods
3020 Juneberry Terrace
Obiedo, Florida 32766

Michael Wieder
70 Butz Road
Kutztown, PA 19530

Corporal Kathy Jo Winterbottom
PA State Police, Troop M
8320 Schantz Road
Breinigsville, PA 18031

Trooper Stephen Campbell
PA State Police
8320 Schantz Road
Breinigsville, PA 18031

Renee Smith, Esq.
Lehigh County Prosecutors Office
455 W. Hamilton Street
Allentown, PA

Susan Shenkin, Esq.
PennDot
7000 Georges Blvd., Suite 413
King of Prussia, PA 19406

V. PROPOSED EXHIBITS

D-1: Section 1547 Chemical Testing Warnings

D-2: Breath Test Operation Log

D-3: License Suspension Hearing Notice

D-4: Police Criminal Complaint (including affidavit)

D-5: Certificate of Breathtesting Device Accuracy dated
2/2/01

D-6: Certificate of Breathtesting Device Accuracy dated
3/9/01

D-7: Ankele's criminal history record

D-8: Police Criminal Complaint #31-3-01

D-9: Section 3731 of 75 PSA.

D-10: Intoxication Report

D-11: Information filed by Lehigh County Prosecutor's Office

VI. ESTIMATED TIME OF TRIAL

Defendant believes this case will require two and one half days to try.

VII. SPECIAL COMMENTS

Trooper Hambrick has filed a motion for summary judgment, which motion remains outstanding and which is incorporated herein by reference.

Trooper Hambrick renews the motion in limine previously filed in this action in connection with plaintiff's proposed trial exhibits only.

D. MICHAEL FISHER
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I, Theodore E. Lorenz, Deputy Attorney General, hereby certify that Defendant's Pretrial Memorandum, Proposed Jury Questions, and Proposed Voir Dire was filed electronically with the Clerk's Office on October 3, 2003 and is available for viewing and downloading on the Court's Electronic Case Filing System ("ECF"), with a copy sent by regular mail, postage prepaid, to:

Richard Orloski, Esq.
Orloski, Hinga, Pandaleon & Orloski
111 North Cedar Grest Blvd.
Allentown, PA 18104-4602

D. MICHAEL FISHER
ATTORNEY GENERAL

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